IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 80 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GODIJI PARSHWANATHJI JAIN DERASAR

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR D.A. MEHTA, MR. R.K. PATEL, MR. B.D.KARIA for
MR KC PATEL for Petitioner
MR M.J. THAKORE, instructed by
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 20/02/97

ORAL JUDGEMENT (Per Rajesh Balia,J.)

The assessee, a public charitable trust, filed its return for assessment year 1976-77 on 30th June, 1978, showing a loss of Rs. 1,31,740/-. The return was

due to be filed on 30.6.1976 as per the provisions contained in Section 139(4A) read with Section 139(1) of the I.T. Act. The assessment was completed by computing the net loss as Rs. 85,402/-. Since the return was due on 30.6.1976 and filed after two years, penalty proceedings under Section 271(1)(a) of the Act were initiated for late filing of the return. The Income Tax Officer, did not find the cause furnished by the assessee reasonable and levied a penalty in the sum of Rs. 3,830/by its order dated 9.12.1980. While appellate Assistant Commissioner deleted the penalty by accepting the explanation furnished by the assessee for delayed filing of return, the Tribunal vide its order dated 23.7.1983 did not accept the explanation for delay furnished by the assessee, to be reasonable and held that delay must be considered contumacious and restored the penalty levied by the Income Tax Officer. The contention had been raised that as the ultimate assessment was at nil income and charitable trust was exempt from payment of tax, no penalty could be levied for delayed filing of return under Section 271(1)(a), which also did not find favour with the Tribunal.

In the aforesaid circumstances, the Tribunal at the instance of the assessee has submitted the statement of case and referred the following question of law arising out of its appellate order under Section 256(1) of the Act.

"Whether, the Tribunal was justified in confirming the penalty when no tax was payable at all by the assessee being duly exempted under an appropriate provision of law?"

Section 271(1)(a) during the relevant period in question provided that where an assessee has without reasonable cause failed to furnish the return of total income which he was required to furnish under sub-section (1) of Section 139 or in pursuance of notice given under Section 139(2) or Section 148, is liable to penalty for such late filing of the return. The penalty prescribed in such cases with reference to the charitable trust liable to furnish return of income under sub-section (4A) of Section 139 is that where the total income in respect of which it is assessable does not exceed the maximum amount which is not chargeable to income tax a sum not exceeding 1% of the total income computed under the Act. It further envisages that in the cases of such assessees, for the purposes of levy of penalty, the computation of income must be such which results from without giving effect to the provision of Sections 11 and 12 of the Act.

This is also the requirement of sub-section (4A) of Section 139, which gives rise to an obligation on the part of such representative assessee to file a return without notice that is to say, where without giving effect to the provisions of Sections 11 and 12, a charitable trust has income chargeable to tax exceeding the limit upto which tax is not levied, then it is obligatory on the part of the trustee to file the return in respect of the assessment year without notice. In other words requirement of furnishing a return under Sec. 139 (4A) arises in the circumstances where a charitable trust has taxable income in the previous year unless resort is taken to Sections 11 and 12 for the purposes of excluding such income like which has been accumulated to the extent permissible or has been applied to the charitable objects for which the trust exists. It is not in dispute that returns in the present case were due under Section 139(4A). Section 139(4A) makes it further clear that in such cases the return is considered to be as one required under sub-section (1). Reading the two provisions together makes it further clear that the fact that ultimately entire income is exempt from payment of tax by invoking provisions of Sections 11 and 12 has no bearing on the question of levy of penalty when obligation to file return within time has not been discharged and explanation for late filing of return has not found to be acceptable by the fact finding authority.

In these circumstances, we have no hesitation in coming to the conclusion that the Tribunal was justified in confirming the penalty even when no tax was payable at all by the assessee on account of exemptions under appropriate provisions of law namely Sections 11 and 12 of the Act, when it did not find the cause furnished by assessee for delay in filing of return, reasonable. It is not the case of the assessee that in the assessment of income, exemptions other than under Sections 11 and 12 have been taken in to consideration.

Accordingly, we answer the question referred to us in the affirmative that is to say, in favour of the revenue and against the assessee. The reference stands disposed of with no order as to costs.
